

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

***In re* UPSTART HOLDINGS, INC.
SECURITIES LITIGATION.**

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: **Case No. 2:22-cv-02935**
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: **Chief Judge Algenon L. Marbley**
: **Magistrate Judge Elizabeth P. Deavers**
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ORDER

This issue comes before this Court on Putative Class Members’ Limited Motion to Intervene. (ECF No. 76). In the Motion, Alger Funds¹ explains that they are putative class members who seek to intervene under Federal Rule of Civil Procedure 24(b)(1)(B) “for the sole and limited purpose of protecting certain of their individual claims . . . from expiry under the Securities Exchange Act of 1934’s . . . statute of repose,” should the class in this case not be certified or if a class is certified only after the five-year statute of repose expires. (*Id.* at 3-4). Alger Funds explains that the Supreme Court encouraged this protective mechanism in *California Public Employees’ Retirement System v. ANZ Securities, Inc.*, 582 U.S. 497, 513 (2017), and that, to its knowledge, every court asked for the relief in this context has granted it. (*Id.* at 4, 9-10).

¹ The “Alger Funds” are the Alger Funds II; The Alger Institutional Funds; the Alger Portfolios; the Alger ETF Trust; Alger 35 ETF; Alger 35 Fund; Alger Capital Appreciation Fund; Alger Capital Appreciation Institutional Fund; Alger Capital Appreciation Portfolio; Alger Capital Appreciation Series CIT; Alger Dynamic Opportunities Fund; Alger Dynamic Return Fund LLC; Alger Focus Equity Fund; Alger Large Cap Growth Portfolio; Alger Mid Cap 40 ETF; Alger Mid Cap Focus Fund; Alger Mid Cap Growth Fund; Alger Mid Cap Growth Institutional Fund; Alger MidCap Growth Portfolio; Alger SICAV – Alger American Asset Growth Fund; Alger SICAV – Alger Dynamic Opportunities Fund; Alger SICAV – Alger Focus Equity Fund; Alger SICAV – Alger Mid Cap Focus Fund; Alger SICAV – Alger Small Cap Focus Fund; Alger SICAV – Alger Weatherbie Specialized Growth Fund; Alger Small Cap Focus Fund; Alger Spectra Fund; Alger Weatherbie Enduring Growth ETF; Alger Weatherbie Specialized Growth Fund; Alger Weatherbie Specialized Growth Portfolio; Alger Collective Trust Spectra Series; Weatherbie Growth Fund LP; Weatherbie Long/Short Fund; and Weatherbie Specialized Growth Series CIT.


Alger Funds represent that they do not seek to be appointed as class representatives, or “otherwise interpose themselves into the Class Action.” (*Id.* at 6). And pursuant to the standards for evaluating permissive intervention, *see United States v. Michigan*, 424 F.3d 438, 445 (6th Cir. 2005), Alger Funds argue that the motion is timely; that as members of the class, their claims necessarily share common question of law and fact with the rest of the class; and that their intervention will not cause undue delay or prejudice to any party, since they only seek to prevent their claims from being extinguished and not to otherwise disrupt the litigation. (*Id.* at 13-16).

After Alger Funds filed its Limited Motion to Intervene, Alger Funds and Defendants filed a Stipulation, pursuant to which Defendants agreed to file a statement of non-opposition to the Intervention Motion. (ECF No. 81). Defendants subsequently filed such a Statement of Non-Opposition. (ECF No. 82).

For the reasons articulated in the Motion, which is now unopposed pursuant to stipulation, the Motion is **GRANTED**. (ECF No. 76). It is **ORDERED** that:

- (1) The Alger Funds are permitted to intervene as a member of the putative plaintiff class as of the date of their motion for the limited purpose of preserving their individual claims against defendants with respect to the expiration of the statute of repose; and
- (2) for all other purposes in this action, the Alger Funds shall remain passive members of the putative plaintiff class with all the associated rights and protections, including protection from being subject to discovery in this action.

IT IS SO ORDERED.



ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATE: August 1, 2024